

# **EXHIBIT 1**

UNITED STATES DISTRICT COURT  
DISTRICT OF VERMONT

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JAMES D. SULLIVAN, ET AL )

VS ) CASE NO: 5:16-CV-125

SAINT-GOBAIN PERFORMANCE )  
PLASTICS CORPORATION )

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HEARING ON MOTION TO COMPEL

BEFORE: HONORABLE GEOFFREY W. CRAWFORD  
DISTRICT JUDGE

APPEARANCES: DOUGLAS A. RULEY, ESQUIRE  
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(Appearances continued:)

DATE: August 28, 2017

TRANSCRIBED BY: Anne Marie Henry, RPR  
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1 (The Court opened at 10:35 a.m.)

2 THE CLERK: Your Honor, the matter before the  
3 Court is civil number 16-125, James Sullivan et al versus  
4 Saint-Gobain Performance Plastics Corporation. Present on  
5 behalf of the plaintiffs are Douglas Ruley, Emily Joselson  
6 and Patrick Bernal. Present on behalf of the defendant are  
7 Mark Cheffo and Brad Fawley is joining us by video  
8 conference from Burlington.

9 THE COURT: All right.

10 THE CLERK: And we are here for a hearing on the  
11 motion to compel the production of medical records and  
12 information.

13 THE COURT: All right. Morning. I'm sorry to be  
14 late. I was supposed to see the dentist at 8 and he was  
15 already running late. So I apologize for getting a late  
16 start. And I appreciate your all making the trip.

17 Here's what I would suggest, I would like to hear  
18 from the plaintiffs first as to what they plan to  
19 demonstrate in order to achieve class certification and  
20 which subsection of 23, Rule 23 we're proceeding under. And  
21 it doesn't have to be an elaborate presentation at all, but  
22 I think that will frame the issue, the discovery issue for  
23 both of us. And then I'll turn things over to Mr. Cheffo  
24 and we'll proceed with the motion in the normal phase.

25 So if you could just kind of outline what you plan

1 to prove in order to achieve class certification  
2 particularly with respect to the medical monitoring issue.

3 MR. RULEY: Yes, Your Honor. Let me just start  
4 with medical monitoring since that's --

5 THE COURT: Right.

6 MR. RULEY: -- really the part of this case that's  
7 at issue in this motion.

8 What we intend to show, to prove class  
9 certification for medical monitoring is that there is a  
10 class or group of plaintiffs in Bennington who have been  
11 exposed to the defendant's PFOA in their drinking water and  
12 therefore have above background levels of PFOA in their  
13 blood serum. That, so that's the first part. Exposure.

14 The second part is that that exposure leads to a  
15 common set of increased risks or altered biomarkers for  
16 various system functions of the body.

17 So part one is common exposure. Part two is a  
18 common set of increased significant risks. And then part  
19 three is the expert testimony that based on that exposure  
20 and the resulting risks that there's a series or a program  
21 of medical monitoring that can respond to those risks,  
22 address those risks and put people in the position to be  
23 able to get needed healthcare should the exposure and the  
24 risks manifest themselves in members of the group.

25 So we believe all of those things can be proven

1 through common proof. And that that, that what, what  
2 defines medical monitoring, whether it's a remedy, whether  
3 it's a cause of action and what plaintiffs need to show is  
4 entirely a matter of state law. And that's true even under  
5 the cases that the defendant cites.

6 We're still considering exactly which parts of  
7 Rule 23. Certainly Rule 23(b)(3) and probably Rule 23(b)(2)  
8 as well seeing the remedy of medical monitoring as a court  
9 supervised program, which is a form of injunctive relief  
10 appropriate under 23(b)(2).

11 THE COURT: All right. And when will I know  
12 whether you're going under, which subsection of the rule  
13 you're going to proceed?

14 MR. RULEY: When we file the motion for class  
15 certification --

16 THE COURT: Fair enough.

17 MR. RULEY: -- at the end of September.

18 THE COURT: Fair enough. Okay.

19 MR. RULEY: Do you want me to address other  
20 elements of our -- okay, I'll sit down.

21 THE COURT: I think that lays it out. And I have  
22 it in mind. And I'll turn things over to Mr. Cheffo because  
23 it's his motion and give you a chance.

24 MR. RULEY: Thank you, Your Honor.

25 MR. CHEFFO: Your Honor, good morning.

1 THE COURT: Good morning.

2 MR. CHEFFO: Thanks, as always, for entertaining  
3 this hearing today. So I have a few kind of core comments.  
4 And, obviously, if Your Honor has some specific questions,  
5 this is our motion to compel. This is an important issue to  
6 us, but I would submit it's a pretty straight forward issue  
7 under Rule 26. I think I'd start with the fact, you know,  
8 that not only do we think that the case law is on our side,  
9 in fact, we've not been able to find a single case that has  
10 kind of sided with plaintiff's position that defendants are  
11 not entitled to, to this type of discovery.

12 And I think Your Honor asked some very good  
13 questions as always. And I would just maybe start with what  
14 counsel kind of articulated. And I appreciate their candor  
15 on this that they are still working through it, but what I  
16 would suggest is that notwithstanding how they may  
17 ultimately, you know, if you kind of parse what they are  
18 suggesting, it's we're going to hear kind of what their plan  
19 is and then really they're saying it's experts that will  
20 have a, you know, tell us what this medical monitoring plan  
21 is. So at that point kind of discovery will have been done.

22 What we're talking about -- and he also suggested  
23 that there has to be a common exposure and then it's a  
24 common set of increased risk. Well, when you think about  
25 that, that's essentially saying, you know, we're going to

1 define what this increased risk might be and that kind of  
2 stands on its head, medical monitoring, at least our ability  
3 to challenge this.

4           You know, for purposes of today I'm not going to  
5 keep suggesting that we don't agree with medical monitoring.  
6 I think Your Honor knows that we don't think that there's a  
7 cause of action nor is it appropriate for certification.  
8 But if you were to kind of get to that point what we're  
9 talking right now is not whether you certify or not, it's  
10 whether we can have an ability to present to you evidence to  
11 suggest that there are individual issues which predominate.

12           What we have right now, frankly, is a situation  
13 where the case law, as I've seen it and read it and  
14 understand it, there's no case that says that you can't get  
15 this type of discovery, frankly, in my experience this  
16 doesn't even usually come up because the plaintiffs, of  
17 course, give authorizations as to medical records.

18           When you read the cases that both parties cite,  
19 even the ones that don't address the issue of a motion to  
20 compel, they all talk about medical records. And, of  
21 course, the reason why the courts talk about that is because  
22 they received them and both parties are able to look at the  
23 medical history of the class reps. This is not a situation  
24 where we're seeking at this point certification -- discovery  
25 beyond the class reps.



1 THE COURT: How many are there, four now or six?

2 MR. CHEFFO: There are four. And, you know, and  
3 um, --

4 THE COURT: And they are essentially random except  
5 that they are the people that have the fortitude to put up  
6 their hand and say --

7 MR. CHEFFO: Yeah. Though I would suggest it's a,  
8 you know, it's a little bit of a, you know, there's been a  
9 little bit of a goose gander. And as I suggested many times  
10 at this podium, you know, we have very good lawyers on the  
11 other side, right. They are very experienced. But there  
12 has to be some parody here in terms of kind of how you use  
13 it.

14 So, for example, when they had two reps and they  
15 suggested that they were going to withdraw them and amend  
16 their complaint, they basically said, in some great detail,  
17 some pretty confidential information about their medical  
18 history.

19 THE COURT: Right.

20 MR. CHEFFO: Here's why. And that's still on the  
21 record today. So this idea that somehow this is information  
22 that no one can get, well, obviously they got the  
23 information and when they wanted to use that medical history  
24 to suggest that these people had had injuries or medical  
25 conditions that were not related to PFOA, but somehow would

1     complicate their ability for class reps, they came forward  
2     and presented that information.

3             And, you know, so -- and it can't be that the  
4     Court and defendants don't have access to that same level of  
5     information. So that's one thing, is that this has been  
6     used before. And, you know, I don't think anyone's going to  
7     suggest that there's something called kind of medical  
8     monitoring 101, right. In other words, that if you were  
9     able to get a class of medical monitoring certified that  
10    means that every disease endpoint ever known to man or woman  
11    is something that people would be subject to, right. It has  
12    to be, you know, and I think even the plaintiffs have  
13    suggested that there's certain diseases that they believe  
14    that they've focused on, certain ailments.

15            Well, in order to identify that -- so, for  
16    example, one is high cholesterol. You know, that's not  
17    exactly uncommon in our society. And as they've said a few  
18    times and today is they not only have to show exposure and  
19    common issues, but they have to show that, that the folks  
20    would get monitoring above and beyond what they normally  
21    would have gotten, right.

22            So to the extent that Mr. Smith or Mrs. Jones has  
23    cholesterol and is taking Lipitor or Crestor or something  
24    else and goes to a cardiologist, well, that's something that  
25    we would certainly be able to -- should be able to show, you

1 know, at the class certification stage that this isn't  
2 something that's above and beyond. And that's just, you  
3 know, one example for what they've kind of highlighted.

4 So really at this point what we're talking about  
5 is a situation where we need to have the ability to show  
6 that there are individual issues and they predominate.

7 Now, the plaintiffs have said, we will agree with  
8 you and we'll kind of stipulate that all people are  
9 different. Okay. We can agree on that.

10 THE COURT: Right.

11 MR. CHEFFO: But if they came in and they said, we  
12 will agree that these differences predominant such that you  
13 can't have class certification obviously we wouldn't be  
14 here. But that's not their point. Their point is, you  
15 know, essentially we want this information, we have it,  
16 apparently they've talked to their plaintiffs, they can get  
17 this information. These are just their reps. They've used  
18 it when they think it's appropriate and for strategic  
19 reasons. And I think kind of most importantly are really  
20 the two core issues. This is discovery. The plaintiffs,  
21 you know, as we're kind of standing here today, there's been  
22 extensive discovery requests from the plaintiffs, which  
23 we're endeavoring to provide. They are taking depositions  
24 kind of as we speak. I think one was last week, a 30(b)(6).  
25 And there will be other ongoing discovery all towards the

1 plan that Your Honor put in place in terms of having, you  
2 know, core amount of information on class cert available so  
3 that we can appropriately contest it. And that's really  
4 what this is about.

5 And, again, from our perspective, Your Honor, this  
6 isn't a close call. And I don't mean that to be  
7 presumptuous. I just say when I read the cases I don't --  
8 there's not even a case that I feel like I have to stand up  
9 and distinguish as kind of being wrongly decided or against  
10 the weight because there is no case that says in a medical  
11 monitoring situation defendants are not entitled to it. I  
12 think all of the cases they've cited either talk about kind  
13 of class certification per se, but the vast majority that  
14 they've cited actually talk about courts looking at the  
15 individual medical differences. And in most cases, actually  
16 even in their cases, the courts deny class certification  
17 based on the specific differences of the parties.

18 And, again, the only way you know -- of the class  
19 reps. The only way that Your Honor would know that, and we  
20 would know that and be able to present that, is to get this  
21 core information.

22 So I've actually not been in a situation in these  
23 medical monitoring cases that I can recall where the  
24 plaintiffs haven't given medical authorizations for the  
25 reason that they need -- they understand that they are going

1 to need to show some kind of program. Their experts are  
2 ultimately going to need to show some kind of program that  
3 fits under their view of the world the parameters of what  
4 the exposure is and what's an appropriate medical  
5 monitoring.

6 Again, I may be wrong, but I suspect they are not  
7 going to come in and say, you know, exposure, there's this  
8 thing called medical monitoring and, therefore, every  
9 possible thing that every doctor could ever monitor for we  
10 want Your Honor to certify that class.

11 Again, I think they are more sophisticated than  
12 that. What they are presumably going to say is we think  
13 that there are certain associated disease endpoints or  
14 certain problems and we think a medical monitoring program  
15 can be developed in this way. And, again, without  
16 repeating, Your Honor, I think for us to be able to say,  
17 well, it's not appropriate to or may not be appropriate to  
18 have as part of a medical monitoring program, you know,  
19 looking at high cholesterol levels because we've taken this  
20 deposition of Mr. Jones and here's what he's doing.

21 And those are the kind of things that again, Your  
22 Honor, we don't need to argue class cert today. All we are  
23 asking for is an ability to be able to appropriately defend  
24 ourselves and to present to Your Honor the defenses that we  
25 need.

1 THE COURT: Let me push back gently a little bit.

2 MR. CHEFFO: Yes, sure.

3 THE COURT: You need 50 years including, in many  
4 cases, pediatric records?

5 MR. CHEFFO: Well, you know, I think there has  
6 been -- well, here's what I would say is if the plaintiff's  
7 view of the world was, you know, that's totally burdensome  
8 and we'd like to limit it or there's some reason why we  
9 can't do it or they are not available, as we all know many  
10 medical providers don't --

11 THE COURT: They die and they close their offices.

12 MR. CHEFFO: And they keep records I think seven  
13 years. So, sure, I mean, that, you know, when you're asking  
14 for things, I mean, to the extent -- so let me give you an  
15 example. To the extent that one of them had in their house,  
16 you know, a file cabinet that had all of their medical  
17 history going back 50 years, you know, I mean, again, I  
18 think if you or I were going to the doctor outside of  
19 litigation, right, and you had some kind of serious injury  
20 or serious illness the doctor, you know, they all want as  
21 much information so that if you had the mumps as a child or  
22 rubella or polio, or things like that, it possibly could  
23 impact your current state.

24 Now, we live in the real world, right. And, you  
25 know, no one's suggesting that we should do something

1 that's, you know, incredibly onerous or that we need to go  
2 and find records that don't exist. So the request, of  
3 course, is for all of this information. But if they come  
4 back and say, you know, here's the authorizations, here's  
5 the people that we know of, and, again, all we're talking  
6 about here is authorizations, right.

7 I mean, if they have the information, and if they  
8 are aware of it in their interrogatories, we're not asking  
9 them to go out and find out about other people. It's  
10 basically going to their own clients and saying let's sit  
11 for an hour, you know, what were all of your childhood  
12 illnesses, who were the doctors that you saw or what can you  
13 remember.

14 To the extent that they then take authorizations  
15 and give those medical records we'll go and collect them.  
16 We'll provide a copy to the plaintiffs. So, you know, as  
17 this works kind of in the real world and practically it's  
18 not particularly burdensome. And to the extent that they  
19 have a specific concern or objection they can voice it. But  
20 I will tell you essentially the position has been, you know,  
21 you get no documents whatsoever, not even currently a single  
22 record or material.

23 And so the conversation about, you know, could you  
24 live with X. or, you know, this particular person doesn't  
25 remember it, we'd like to do it, we've worked very

1 cooperatively with the plaintiffs. I mean, you know, that's  
2 why we're not before Your Honor on every minute.

3 THE COURT: Yeah, I appreciate it.

4 MR. CHEFFO: So I think that the rule of reason  
5 would apply if they had a particular concern about a  
6 particular record.

7 THE COURT: And then a lifetime of employment  
8 records too?

9 MR. CHEFFO: Yeah. Well, there's, you know, so  
10 that's I think, you know, an even easier one. Again, to the  
11 extent it exists. But, you know, --

12 THE COURT: Most people have been employed so  
13 there's some kind of record.

14 MR. CHEFFO: Right. And even, you know, again,  
15 the plaintiff's position, and I'm not in any way being  
16 pejorative, I think I understand it, and I understand that  
17 the plaintiffs believe that they have an exposure and they  
18 believe that they may have some health consequences. We  
19 disagree with that, but I respect their opinion.

20 THE COURT: Sure.

21 MR. CHEFFO: But PFOA has been around for 50 years  
22 or more than 50 years or these chemicals.

23 THE COURT: Right. Right.

24 MR. CHEFFO: So, you know, employment, well, what  
25 would happen if somebody worked, you know, 50 years ago for



1 X., Y., Z. company that manufactured this or they worked for  
2 a ski wax company that used these materials, because this  
3 isn't a ubiquitous chemical. It's not just Saint-Gobain.  
4 You know, Saint-Gobain didn't manufacture this. It used it.  
5 So it's a DuPont, there's others.

6 So, again, you know, this is discovery. If they  
7 didn't work at any of those -- if they worked in a candy  
8 store and they -- or whatever, they sat in an office doing  
9 an accountant they would just write that. But I think it  
10 would be imprudent of us, right, representing out client,  
11 knowing that there were very substantial industrial and  
12 other uses for this chemical and similar chemicals.

13 And one other point is, you know, --

14 THE COURT: So let me interrupt.

15 MR. CHEFFO: Sure.

16 THE COURT: So what you need is a list of  
17 employment, and then you can look at that, and when you  
18 discover somebody who was an elementary school teacher you  
19 probably don't need 30 years of his or her records, right?

20 MR. CHEFFO: I think that would be right. You  
21 know, with the one caveat of this, and, again, you know, you  
22 -- it doesn't, it never kind of hurts to ask again. They  
23 are not going to be burdened by doing it.

24 So, for example, if in the elementary school  
25 teacher there's records -- there happens to be medical

1 records where she saw a doctor for 10 years for X., Y. or  
2 Z., or took a medical leave because she had heart  
3 palpitations, right, and is now claiming cardiac injuries,  
4 see the whole point here is that the plaintiffs are  
5 suggesting that PFOA somehow causes all these diseases, that  
6 it's a given, right. Again, we understand what their  
7 position is, but we don't agree with that. And what our  
8 suggestion is there is a host of chemical exposure workplace  
9 and other injuries that could potentially cause these exact  
10 things because these are not signature type injuries, right.  
11 It's a cancer, it's a, it's a high cholesterol, it's  
12 ulcerative colitis, right.

13 I think we all agree that these occur in some  
14 people, right, absent exposure to PFOA. So what we're  
15 trying to do at the discovery stage is highlight that, to  
16 basically say that, you know, you are basically suggesting a  
17 medical monitoring program that's focused only on PFOA, but  
18 these people had life experiences. They could have worked  
19 at a nuclear power plant, they could have worked in a scrap  
20 yard when they were younger. You know, a paper  
21 manufacturing plant, an asbestos company.

22 I mean, again, I don't know, you know, but we  
23 wouldn't be doing our jobs. And I think these are the kind  
24 of discovery that courts routinely grant because at the end  
25 of the day if they signed an authorization for 30 years of

1 school records and we send it in and we get a letter back  
2 that says we no longer maintain them or they send a letter  
3 back and, again, these are all subject to a protective  
4 order, that said that, you know, Mr. Jones had a perfect  
5 history, there's nothing in here. Well, then, that goes in  
6 the pile of information that is not going to be relevant to  
7 this case.

8 But we don't know what's there. And these are  
9 some very serious allegations that they've had a chance to  
10 right pick, to kind of hand select these few  
11 representatives.

12 So at least as to those we feel that should get,  
13 you know, some broad discovery so we can properly mount a  
14 defense. And I think that the types of defenses and issues  
15 that I'm highlighting, you know, I'm not making them up,  
16 right, for the first time, right. There's been other smart  
17 lawyers before on the defense side who have highlighted  
18 these all. And the reason why they've been able to do that  
19 is because courts have given some latitude at the discovery  
20 stage under Rule 26 to allow us to marshal our defenses and  
21 to at least look. And if we find that it's not there, you  
22 know, then that's -- they've wasted, you know, an  
23 authorization and we've wasted \$50 in seeking, you know,  
24 these records.

25 THE COURT: Your estimate might be low, but that's

1 more on your side than on mine.

2 MR. CHEFFO: It could be \$500 or more, right.

3 THE COURT: And then what, Worker's Comp, was that  
4 the third category?

5 MR. CHEFFO: Yes. Right. Worker's Comp, the  
6 medical records and employment. And, again, those are the  
7 places that you would expect to, to, if you saw things  
8 outside -- and, you know, and the plaintiff's answering the  
9 interrogatories which ask for this information.

10 THE COURT: Right. So that's just practicalities.  
11 So you build these dossiers and then you come back when we  
12 have the hearing on class certification and you tell me that  
13 these four people are very different, no surprise, different  
14 ages, different genders, different work histories, different  
15 everything. And one has high cholesterol and one has low  
16 cholesterol and keep our fingers crossed nobody has cancer.  
17 What am I supposed to do?

18 The piece I couldn't find, as I kept trying to  
19 think through it, is I don't think you have an expert that's  
20 going to say these two have a high risk of developing a PFOA  
21 related disease and these two, rule them out, they are  
22 healthy as can be. I think the expert is going to say, I  
23 don't know if they are going to get it or not, right?

24 MR. CHEFFO: Well, again, Your Honor, two things.  
25 One is a fair question, right, we're not here to argue class

1 cert yet, but certainly I'm happy to tell you what I think,  
2 I mean, I don't have the expert reports in my hand so I  
3 don't want to presuppose what an expert's going to say. But  
4 I would just suggest -- I look at it maybe a little  
5 differently, Your Honor.

6 You know, it's the plaintiff's burden, right, to  
7 come forward and suggest why a class should be certified,  
8 right. They are going to have the burden of meeting the  
9 Rule 23 criteria and showing that individual issues  
10 predominate, right.

11 THE COURT: Right.

12 MR. CHEFFO: So our expert doesn't necessarily  
13 have to say at this stage, and, in fact, that would probably  
14 be merits, you know, that I can rule out that someone's  
15 injury was or wasn't caused by that.

16 But what the core issue is, the experts on both  
17 sides need to be able to do is they are going to come  
18 forward and say, here's a medical monitoring plan, here's  
19 why it's appropriate for a class of thousands of people,  
20 right. And we're dealt the hand we can get. We can only  
21 take discovery at this point of the class reps.

22 So in addition what our expert would likely say  
23 beyond these class reps, there are other issues and  
24 causation, you know, every court that's looked at these kind  
25 of things looks at the class rep, you know, prism and says,

1 well, here's why we can't certify because they are seeking  
2 X. and this person, you know, we just dealt with the two  
3 folks that they withdrew, right. One had --

4 THE COURT: But to be fair, I thought the  
5 discussion about those two people got a little, what's the  
6 right word, distracting. Two people got sick and had to  
7 leave because, as I understand it, they couldn't kind of  
8 bear up under the obligations of being a class  
9 representative.

10 I mean, so be it. I didn't think there was any  
11 kind of deviousness or anything complex.

12 MR. CHEFFO: No.

13 THE COURT: I thought probably those illnesses  
14 that were described were absolutely true and, like, they  
15 were older people. And I think we just wish them well. I  
16 don't think it really -- that doesn't say to me finding  
17 class representatives is an impossible task.

18 MR. CHEFFO: No. No. And I agree with that.  
19 Just to be clear why, because no one's picking on the  
20 plaintiffs or certainly these folks. I mean, they have  
21 every right to join or not join.

22 THE COURT: Right. Right.

23 MR. CHEFFO: I think the point only there was, at  
24 least as we read it, I mean, look, if somebody, you know, if  
25 we have a witness whose elderly and has a stroke off a bit

1 or something we're going to come to the Court and say they  
2 can't participate and seek relief. And we fully respect  
3 that.

4 THE COURT: Sure.

5 MR. CHEFFO: I think the point was, these folks  
6 had, in our view, some of the same types of medical issues  
7 that came up during this that would have undercut their  
8 ability to be class reps because it was caused by the  
9 plaintiff's own admission by things other than PFOA.

10 So it complicated their legal case in addition to  
11 perhaps making it difficult for them to proceed. And that's  
12 kind of the point, right, in terms of if these reps will  
13 otherwise have to be monitored for the same types of things  
14 that we're seeking now, right, and it's whether they will or  
15 it's normal course.

16 So, in other words, there's certain things that we  
17 probably all as men when we're 50, you know, doctors say  
18 what we should do and women when they are 40 and, you know,  
19 folks when they are 70, there are certain medical  
20 guidelines, right, our children, that you're supposed to  
21 adhere to. And at least as I understand the medical  
22 monitoring law what you have to show not just, you know,  
23 that you pay for every potential medical cost ever, but it  
24 has to be something above and beyond what someone normally  
25 would get.

1           So if someone would normally get a heightened  
2 level of medical attention because either they fit within  
3 some type of guideline, or they have a family history, or  
4 they have a work exposure, or they have family history, or  
5 things like that. So the only way, right, all of those  
6 factors that I just articulated, the only way you know that  
7 is through discovery, right. We cannot divine, you know, a  
8 particular person's, you know, medical history or work  
9 exposure.

10           So, and I think that's one factor. So I think  
11 what our, you know, expert would likely look at -- and two  
12 things. It's not just what our expert would say, but we're  
13 going to also have an opportunity to depose their expert,  
14 right. So in things that Your Honor would read into the  
15 transcript or, you know, our culling of it. And, you know,  
16 in terms of whether there's a Daubert motion or whether it's  
17 just something that you're going to basically use to  
18 determine your ruling on Rule 23.

19           We need to be able to basically question the  
20 expert, well, did you consider that, how is it that you find  
21 that this is an appropriate medical monitoring when  
22 Mr. Jones or Mr. Smith also is being monitored for this. Or  
23 were you aware that they had been diagnosed four years ago  
24 with this same thing prior to PFOA exposure or were you  
25 aware that they also worked at a factory where they



1 manufactured X. which had probably 10 times more PFOA  
2 exposure than they ever could have gotten from drinking at  
3 home.

4           It's hard for me to give you all the examples, but  
5 these are the types of kind of issues that arise and the  
6 only way we get to them is discovery. And, again, you know,  
7 if we were coming in and saying the plaintiffs are not  
8 entitled to any discovery and we just want to kind of do  
9 this de novo that would be one thing. But the plaintiffs  
10 have asked for a lot of information going back 25, 30 years,  
11 you know. And some of that, in fairness, is because the  
12 plant closed, you know, a long time ago.

13           But we're having to do 30(b)(6) depositions and  
14 recreating documents and admissions based on the best  
15 information that we can have going back 25, 30 years. And I  
16 suspect both sides are going to be talking about science and  
17 studies that are going back some period of time.

18           So, you know, this is, this is something that is  
19 really, you know, again, in my experience, and I think the  
20 case law, pretty well defined. Like, in other words, as I  
21 said, I have not seen a court which says at this stage you  
22 can't even get to see it because that would really, that  
23 would make our task almost impossible. I mean, it would  
24 almost be like what's the point of having a class rep,  
25 right. If the plaintiffs can just come and say we picked

1 somebody, all we're going to do is give you their PFOA level  
2 maybe or tell you that they were exposed. And then we're  
3 going to have an expert come in and say, we think that they  
4 are entitled to medical monitoring.

5 I mean, if that was the standard what would we be  
6 able to ask this person if we can't get their medical  
7 records, if we can't get their educational history, we can't  
8 understand if they were ever injured in a case involving  
9 medical monitoring and personal injuries. I mean, that  
10 seems to be the core.

11 And the final thing I'll say, Your Honor, is that  
12 if, even if the Court were not to, and we hope that it  
13 wouldn't certify, these folks still have their individual  
14 claims of which they are seeking medical monitoring. All  
15 right.

16 So, you know, the idea that they would be seeking  
17 medical monitoring and not want to produce any information,  
18 their own medical history when they have alleged medical  
19 injuries in their complaint, you know, seems, again, to be  
20 turning everything on its head.

21 THE COURT: All right. So if I've heard you  
22 right, really from your perspective, the most helpful thing  
23 that you could find in opposing the certification would be  
24 evidence that the class representatives had alternative  
25 significant exposure opportunities in other settings, work

1 or, probably work, but maybe something I'm not thinking of.

2 MR. CHEFFO: Well, and just to be clear, Your  
3 Honor, that's certainly one, right.

4 THE COURT: Right.

5 MR. CHEFFO: I'm trying to give some examples. So  
6 on this one it's important that I don't leave the Court with  
7 a false impression on my part. My apologies.

8 So certainly alternate is one other issue. But  
9 there could be, let's say the expert says, I think as a  
10 result of this someone should have a certain kind of blood  
11 test once a year or a certain kind of chest x-ray. Again,  
12 I'm just making it up, right.

13 THE COURT: Yeah, I understand.

14 MR. CHEFFO: But we then look at their medical  
15 history and say, well, you are a, you know, 50 year old  
16 woman, you have a family history of cancer, you smoked for  
17 20 years, X., Y. and Z. And a doctor with that  
18 characteristic, that profile, that medical history would  
19 recommend that you get a chest x-ray once a year and get  
20 that medical test, right.

21 That has nothing to do with alternate exposure to  
22 PFOA. That's basically whether that person is entitled to  
23 medical monitoring above and beyond what they normally would  
24 get. And in that situation the answer would be no  
25 irrespective of whether they were ever exposed to PFOA or

1 not, they would have a medical regimen that was required  
2 and, therefore, that's not a basis of medical monitoring  
3 damages.

4 If they worked in a certain facility or plant or  
5 exposed to, you know, any number of chemicals, that could  
6 have ultimately caused potential injury, put them at higher  
7 risk. If they were, received an injury, a head trauma, if  
8 they had heart palpitations before, all of these are things  
9 that would presumably require some level of medical focus  
10 and attention, right.

11 THE COURT: Anyway.

12 MR. CHEFFO: Anyway. And if that's true, you  
13 can't kind of double dip. I mean, that's what -- at least  
14 -- and that's what the plaintiffs I think have said a few  
15 times in the last hearing, that you need to be something  
16 above and beyond what you would normally receive even if  
17 it's available. And in order to show --

18 THE COURT: Like the guy taking two umbrellas out?  
19 Like a guy going out in the rain with two umbrellas?

20 MR. CHEFFO: Exactly. A defendant can't be kind  
21 of made to pay for medical procedures that someone would  
22 ultimately have to have themselves. And the only way to  
23 figure out what that person may or may not be entitled to or  
24 required or suggested of their doctor to do you have to  
25 understand that.

1           And, again, this is just, these would just be  
2     exemplars. You know, we're not -- and I would suggest, you  
3     know, if the Court has any kind of doubt on which way to err  
4     remember you're being asked to potentially certify an entire  
5     class of people who we don't even have that opportunity to  
6     talk to.

7           THE COURT: Right.

8           MR. CHEFFO: So as to the folks who have kind of  
9     stepped up who are the class reps, you know, we should have  
10    at least a broad ability to ask these types of questions so  
11    that we can present these defenses to the Court.

12          THE COURT: All right. That's helpful. Thank  
13    you.

14          MR. CHEFFO: Thank you, Your Honor.

15          THE COURT: Sir?

16          MR. RULEY: Thank you, Your Honor. In their  
17    briefs, and throughout this hearing to this point, the  
18    defendant has avoided the central issue that their motion  
19    presents, which is, are the medical records and medical  
20    histories of our named plaintiffs relevant to the claim for  
21    medical monitoring.

22               And relevancy, what is relevant is determined by  
23    state law. And that's as evidenced in the cases they cite  
24    as the cases we cite. They lead with the Fiorentino case  
25    from Pennsylvania. The first thing the special master said

1 is, to determine what's relevant I need to look at the  
2 elements of medical monitoring under Pennsylvania law.

3 Now, we contend she misinterpreted one of those  
4 elements, but at least as to the mode of her analysis that  
5 was correct.

6 The second main case they cited is the Rowe case  
7 from New Jersey. Here again, we might have some arguments  
8 about what New Jersey law really is, but clearly what the  
9 judge did in that case was apply New Jersey law.

10 THE COURT: Right.

11 MR. RULEY: And, of course, that case didn't even  
12 involve medical records or a motion to compel. It was a  
13 straight class certification decision.

14 And so what's -- the cases they cite from other  
15 states, like New Jersey and Florida, just aren't  
16 determinative because they don't address what's necessary to  
17 show entitlement to the remedy of medical monitoring under  
18 Vermont law.

19 And so if you look at the states that have  
20 recognized some sort of recovery for medical monitoring they  
21 generally fall into two camps. The first camp, exemplified  
22 by states like New Jersey, I mean, New York and  
23 Massachusetts and Missouri tend to treat medical monitoring  
24 as a remedy for an existing tort, nuisance, negligent. And  
25 they have adopted a test for that remedy that is primarily

1 exposure based.

2 Exposure leading to risk leading to the need for  
3 monitoring. And specifically some of those cases, while  
4 they didn't address motions to compel, they did address  
5 whether individualized considerations among the people who  
6 were exposed were relevant. That was raised in the Askey  
7 case in New York. It was rejected. And Askey adopted an  
8 exposure based remedy.

9 And, in fact, the later New York cases of Abusio  
10 and Allen basically say if you are exposed, and you can show  
11 that you have a significant basis for concern, i.e., prove  
12 that the toxin is in your body, you're entitled to medical  
13 monitoring. Medical records have nothing to do with that.

14 The Meyer case out of Missouri, specifically held  
15 individual issues, individualized consideration and medical  
16 histories, if you were making a claim for personal injury,  
17 yes, that would be relevant. But because medical  
18 monitoring, under Missouri law, is an exposure based remedy,  
19 and that was their words, those considerations weren't  
20 relevant. And so that's the first camp. That's the camp  
21 that we think Vermont would fall into.

22 The other camp is exemplified by states that have  
23 adopted medical monitoring as an independent cause of action  
24 and tend to have adopted sort of a multi-factorially either  
25 six or seven factor test.

1           And then they have cited cases from, a couple of  
2     those states, primarily New Jersey and Florida, where  
3     federal courts have interpreted one or more of those  
4     elements to require an individualized approach to medical  
5     monitoring as opposed to the more common or group based  
6     approach of New York, Massachusetts and Missouri.

7           And so that's the central issue here. Will -- is  
8     Vermont part of the first group of states or would it be  
9     more in the second group of cases. That is an issue of law  
10    that is for the Court to decide. And it's an issue that  
11    they have said nothing about because while Vermont doesn't  
12    have a case that has fully detailed and explained the  
13    remedy, such as the Askey case in New York or the Donovan  
14    case in Massachusetts, all indications are that Vermont  
15    looks or would -- accepts medical monitoring as an exposure  
16    based remedy beginning with the Stead case from this Court.

17           There were two significant parts to that case.  
18    The decision clearly treated medical monitoring as part of  
19    the remedy for other torts, the primary tort being  
20    negligence, and it allowed expert testimony that the  
21    exposure of those particular plaintiffs, the oil in their  
22    water, led to increased risks of cancer which justified  
23    medical monitoring over time.

24           So it certainly is consistent with the exposure  
25    based approach. And then if you look at the principles



1 behind that approach that the courts in these other states  
2 have relied on, the primary principle is the idea that a  
3 plaintiff is entitled to recover for all damages past,  
4 present and future, which can include medical monitoring.  
5 That's well-established in the re-statement. That principle  
6 is well established also in Vermont law generally.

7           Given that that principle has been the animating  
8 basis of these decisions in other states we think that's the  
9 direction Vermont would go in.

10           And so the first thing to do is for the Court to  
11 define its view of Vermont law so that we can all know what  
12 is relevant and what isn't. So that's the legal part of  
13 this.

14           The factual part is that, as we all can recognize,  
15 whether we're talking about, it's actually six named  
16 plaintiffs, but only four had significant PFOA in their  
17 drinking water. Whether we're looking at that group of  
18 people, whether you look at the group of people in the  
19 courtroom today or the hundreds of people in Bennington who  
20 have drunk the defendant's PFOA in their well water, you're  
21 going to find individual difference, whether it's in age,  
22 sex, family history, genetic background, what conditions  
23 they have, medical history, what prescriptions they've  
24 taken, body mass index, anything and everything.

25           It's the truism that we all are individuals. And,

1 of course, that's going to be reflected in somebody's  
2 medical history. That is a given.

3 And the legal question that needs to be decided  
4 here can be decided on that basis. Is medical monitoring an  
5 exposure based remedy that can be approached on a group or  
6 common basis or is it inevitably an individualized remedy  
7 that has to be approached on a person by person basis.

8 And everything Mr. Cheffo argued just presumes  
9 that it's the latter. When, in fact, under multiple states,  
10 including our neighboring states, it's the four.

11 And so let's look at the Rowe decision, which is  
12 cited more in their briefs than any other decision. That  
13 case did not address specific differences among the named  
14 plaintiffs and say, well, so and so had this and said so and  
15 so had that. It just addressed that inevitably under the  
16 elements of that Court's interpretation of New Jersey law,  
17 medical monitoring was an individualized remedy which could  
18 not be available on a group basis.

19 That's the decision that needs to be made in this  
20 case. We think the appropriate time to make it is incident  
21 to the motion for class certification, but if it needs to be  
22 made now to resolve this motion then fine.

23 I'd also like to address just a little bit and be  
24 clear. As the Court noted, they have made exceedingly  
25 broad, exceedingly extensive discovery requests. And on the

1 subject of work history, we have provided a listing of the  
2 places that the named plaintiffs have worked and I believe  
3 when they worked there and what their job was.

4 THE COURT: Right.

5 MR. RULEY: And they're welcome to ask questions  
6 about that. And we have provided information that shows  
7 exposure and their blood serum levels.

8 THE COURT: Each, sorry to interrupt, each of the  
9 named proposed class members has been, blood has been drawn  
10 and some serum level has been conducted?

11 MR. RULEY: Well, for the class members who had  
12 PFOA in their well water that they drank. We do have a  
13 class member, for example, who was on town water. And so  
14 didn't have the blood tested pursuant to the state program.

15 And so to produce these records and start down  
16 this path would be significantly burdensome. It would be  
17 very time consuming and expensive. And it would be highly  
18 invasive for these folks. And --

19 THE COURT: But to be fair, no more invasive than  
20 the burden placed on someone who has a broken ankle, right,  
21 and makes a claim at a slip and fall?

22 MR. RULEY: Yes, Your Honor. And --

23 THE COURT: Probably not 50 years. I have never  
24 seen a request for 50 years before, but I think that's  
25 negotiable.

1 MR. RULEY: Well, and when someone breaks an ankle  
2 and brings a claim for personal injury you know you make  
3 that decision to put your medical condition into issue. And  
4 that, that's just, that's the law. That's what it is.

5 What we're saying is before we start down that  
6 path in this case we need, we need some clear definition of  
7 what the law is because under the law of various states that  
8 information just isn't relevant. And particularly isn't  
9 relevant to the decision on class certification.

10 If the main issue on class certification is can  
11 the elements of medical monitoring be met on a group basis  
12 or is it inevitably an individualized basis and individual  
13 questions predominate. That's a question of law. And it  
14 can be decided without references to specific plaintiff's  
15 medical records just as it was in the Rowe case.

16 And so --

17 THE COURT: Let me push back a little bit. Don't  
18 both sides have the right to develop the case in the way  
19 that they want to present it to create the record that they  
20 want? It would be silly to do this case, you know, the  
21 older I get, I really only have one motto in this room which  
22 is I only want to do the case one time. I'm pretty neutral  
23 except on that one issue.

24 MR. RULEY: I think we can all agree on that.

25 THE COURT: Because I don't want to do it twice.

1 And it seems to me you're leading a bit with your chin if  
2 you say, close the defendant down, they get no information  
3 on the medical condition of the named, the named class  
4 representatives, for the reasons that you've articulated  
5 very clearly. It wouldn't be hard to have it sent back if a  
6 reviewing panel takes a different view. You'll say, at  
7 least find out, right.

8 I mean, what if all four class reps worked in  
9 another Teflon company and they have come here trying to, I  
10 don't mean to be conspiratorial about it, but as an extreme  
11 example, they have allied themselves and come here in order  
12 to lay this problem off on this defendant. Not very  
13 probable. But that would be troublesome to the Rule 23  
14 process and probably something that should be known, right?

15 MR. RULEY: Well, and that's why we have provided  
16 the basic summary of each plaintiffs' work history.

17 THE COURT: Right. Right.

18 MR. RULEY: And the issue isn't so much, are they  
19 entitled to develop the case the way they want, the issue is  
20 what is relevant under Rule 26.

21 And under the law of various states  
22 individualized -- when we're talking about medical  
23 monitoring based on exposure to a toxin individualized  
24 medical histories and individualized considerations aren't  
25 relevant because it is an exposure based remedy.

1 Under the law of other states, as interpreted by  
2 the federal courts, it would be relevant. That's what we  
3 need to know.

4 And for purposes of class certification we all can  
5 operate under the truism that these people are individuals.  
6 And they are going to have, any difference that their expert  
7 wants to say should make a difference.

8 Our expert says, look, when you have this stuff in  
9 your water and you drink it and you get an above background  
10 level in your blood here's a set of health impacts and risks  
11 that flow from that and that should be monitored for.  
12 Whatever someone brings to the table in their individual  
13 history because whatever their individual background the  
14 PFOA elevates their risk. Whatever their preexisting risk  
15 was, it just went up.

16 To the extent someone may already be being treated  
17 for something like high cholesterol you address that not in  
18 determining whether a medical monitoring program is  
19 appropriate for this group, you address it in the  
20 administration and implementation of the program through a  
21 well designed questionnaire that seeks to bring out that  
22 sort of background information. And it --

23 THE COURT: You mean after judgment, at the far  
24 end when the remedy is being implemented?

25 MR. RULEY: Well, as part of -- right. As part of

1 administration and implementation of that. And it's not so  
2 much to determine whether the monitoring is justified, it's  
3 to work with -- to the extent somebody gets odd tests back  
4 or something like that to then be able to follow-up  
5 appropriately.

6 And there's -- to the extent Saint-Gobain wants to  
7 argue, well, we shouldn't have to pay for this test for  
8 person X. or that test for person Y., it can be handled at  
9 that stage. As a matter of efficiency, when you are  
10 basically doing primarily blood testing, that's what a lot  
11 of this is, there may be a few other elements, but a lot of  
12 it is basically various tests on blood.

13 Once you are going to do a series of tests to try  
14 to pick out, run this on that sample, but not that on that  
15 sample, it's just far cheaper just to do it on all. But  
16 anyway, those are details that we can get into later.

17 The primary point for today is before you get  
18 discovery you have to show relevance. Relevance is  
19 determined by state law. Under some state laws  
20 individualized considerations are not relevant. Under some  
21 they are.

22 Before we go down this path we need -- and we ask  
23 you to further define or give us your view of Vermont law.  
24 And to start down this path before we know that is, would be  
25 unfair, inefficient and we believe unnecessary, given where

1 we think Vermont law is on this subject.

2 THE COURT: All right. That's helpful. Change  
3 the subject slightly. I'm not sure I understand the harm to  
4 these class representatives if they are obligated to comply  
5 with the discovery requests.

6 MR. RULEY: Well, the harm is they, they would at  
7 that point basically be exposing their lives because a lot  
8 of a person's life is captured in their medical records.  
9 They would be exposing their lives to the company that, in  
10 their view, poisoned them.

11 That's not something they want to do. If they  
12 bring a claim for, right, if they bring a claim for personal  
13 injury then, then that's the way it is.

14 And essentially, I mean, the essence of the  
15 defendant's argument is medical monitoring, personal injury,  
16 it's the same thing. It's got to be treated the same. But  
17 clearly, under the law of various states, that is not true.

18 And so we need, we need to know what the law is in  
19 Vermont before we would go down this path. And the truth is  
20 if, if medical monitoring is an individualized inquiry then  
21 it's going to be very, very difficult to get a class  
22 certified. If it can be approached --

23 THE COURT: On that issue?

24 MR. RULEY: On that issue. Yes. Thank you.

25 THE COURT: You have other claims?



1 MR. RULEY: Yes, indeed.

2 THE COURT: Yeah. Right. Okay.

3 MR. RULEY: If it can be approached on a basis of  
4 common exposure and, therefore, a common set of increased  
5 risks, relative to the general population, that's, you know,  
6 you know, when, when Mr. Cheffo mischaracterizes certain  
7 things it's, it's do they face increased risks relative to  
8 the general population that is not exposed or to the  
9 unexposed population.

10 That's the inquiry, in our view, under the law.  
11 And that's what we're prepared to show. And they are  
12 welcome to any sort of discovery they want on that. But to  
13 get into the individual lives of each of our named  
14 plaintiffs and then flowing on, if that's the view of the  
15 law of every one of the hundreds of the people who have  
16 drunk PFOA, it's going to be very expensive, very  
17 burdensome, very invasive. And, in our view, unnecessary.  
18 And so what we are asking for is a clear definition of the  
19 law of Vermont --

20 THE COURT: Right.

21 MR. RULEY: -- before we go there.

22 THE COURT: All right. Just one more question.  
23 Looking way down the road, in your, in your best case, what  
24 does a successful medical monitoring program look like on  
25 the ground? You're not proposing to send one of these

1 medical buses and have people go in? This would be more  
2 like an order from the Court that extra monitoring by their  
3 family physician would be paid for by the defendant,  
4 something like that?

5 MR. RULEY: I would say probably -- probably what,  
6 what we will propose would be an order from the Court  
7 setting up a court supervised program, probably administered  
8 by a special master, that would say here's a series of tests  
9 that are available to this exposed population in some  
10 regularity, yearly, bi, whatever, whatever the, is justified  
11 by the expert testimony.

12 THE COURT: Right.

13 MR. RULEY: And then the program will be  
14 administered and the data collected through that special  
15 master. And I'm, I'm hesitant to go into much greater  
16 detail than that at this stage. We do propose to put our  
17 proposal to the medical monitoring class in front of the  
18 Court when we file a motion for class cert.

19 THE COURT: I wasn't trying to tie you down to a  
20 specific plan. I just wanted to understand the outline of  
21 what it would look like. It would use people's existing  
22 medical primary care physician arrangements and they'd get  
23 extra testing that way or is this a whole, kind of a whole  
24 other matter?

25 MR. RULEY: Well, I don't envision the Court

1 requiring Saint-Gobain to buy a bus and equipment and all  
2 that sort of thing and send it down to Bennington.

3 THE COURT: Right.

4 MR. RULEY: There are adequate facilities at the  
5 Southwestern Vermont Medical Center. My guess is that's  
6 where most people would go to get these tests, to have the  
7 blood drawn for the various tests to be run on. And then,  
8 yes, certainly the results would be available to their  
9 primary care physician.

10 THE COURT: They are worthless otherwise, right?

11 MR. RULEY: But there also, you know, ideally, in  
12 a medical monitoring program, part of the side benefits of  
13 the program are data collection and generation to help the,  
14 help the, help all of us better understand the effects, but  
15 also follow-up with the individuals participating in the  
16 program.

17 THE COURT: Right.

18 MR. RULEY: Which, here again, primarily would be  
19 through, I think, their local physician. But someone with  
20 the program coordinating and working with that local  
21 physician, yes.

22 THE COURT: All right. Thank you. That's  
23 helpful. I couldn't, I couldn't bring it into focus what it  
24 would actually look like.

25 MR. RULEY: Thank you, Your Honor.

1 THE COURT: Mr. Cheffo?

2 MR. CHEFFO: Yes, Your Honor. Thank you.

3 THE COURT: What do you say to his primary point,  
4 which is that there's a sort of two schools, and before we  
5 start discovery we have to figure out which school we're  
6 going to be in?

7 MR. CHEFFO: I say I've never heard something like  
8 that. Again, I think it's a creative argument by very good  
9 lawyers, but this is not -- this is Rule 26. We're in  
10 federal court, right. We understand procedural versus  
11 substantive, substantive law ultimately. This is a  
12 discovery motion, right.

13 This idea that you would, you would issue kind of  
14 an advisory opinion on what the law of medical monitoring  
15 might be before you even got a motion or, or an expert  
16 report, that that would somehow frame discovery.

17 I mean, you said it well, which is, the plaintiffs  
18 have their theory. I think it's untenable in terms of how  
19 that they are going to have this amorphous theory, you don't  
20 need to talk to anyone, you basically just have a medical  
21 monitoring and then at some point some court appointed  
22 mediator, someone fills out a form and that's the first time  
23 we find out whether they actually do or don't. I mean,  
24 again, that's -- they are going to have to convince the  
25 Court of that.

1           What we're talking about is just Rule 26  
2     fundamental discovery, what's relevant, what's appropriate.  
3     And that's what's relevant, what's likely to lead to  
4     admissible evidence, right. I mean, that's what the  
5     standard is.

6           Counsel talked a few things on these cases. I  
7     mean, and I think, you know, the best time sometimes is just  
8     to go, you know, to the cases. I'm sure Your Honor has had  
9     a chance to at least review them. But, you know, the Rowe  
10    case it was -- I mean, it's a case against DuPont, not my  
11    client in this case. It was a class action for alleged  
12    release of PFOA. And it's a medical monitoring case. And  
13    it's in a district court in New Jersey.

14           THE COURT: For five years I saw, not with  
15    enthusiasm.

16           MR. CHEFFO: Yes. Well, you've had a much more  
17    aggressive schedule perhaps than this. But I don't want to  
18    throw stones at this Court in any way since I might be  
19    before that judge and there may be other circumstances.

20           But what the Court said was that the plethora of  
21    individualized issues underlying the plaintiff's claims,  
22    such as the amount of exposure, the increased risk of  
23    disease and the necessity of medical monitoring, render  
24    class certification inappropriate.

25           And it said that -- and the Court explained, and

1 this is a quote, plaintiffs must show that each class  
2 member, this goes to the burden issue, needs medical  
3 monitoring above and beyond what he or she would ordinarily  
4 need absent the exposure to PFOA. And I'm adding in, this  
5 burden of proof. Quote, implicates the background exposure  
6 to other PFOA sources, health history, medical needs of each  
7 individual class member. And then it said, each class  
8 member's risk of disease will differ depending largely on  
9 individual circumstances such as gender, age, drug, alcohol  
10 use, nutrition, and it goes on.

11 Now counsel's point was, well, we all know people  
12 are different, but the fact that the Court didn't call out  
13 specific people it understood from the record you can't  
14 just -- I couldn't just stand up and say, Judge, you should  
15 just assume that everybody is different, you know, there's  
16 going to be some level of proof. And I think that the fact  
17 that the folks -- that that Court didn't call out people  
18 just kind of highlights the point. But the Perez case,  
19 which we've also cited, which is in the Southern District of  
20 Florida, another district court case, that court basically  
21 said, you know, for instance, one plaintiff had health  
22 problems while another had several health problems,  
23 including Crohn's Disease, right.

24 So, in other words, looking at not just exposure,  
25 but what their disease point to answer the underlying

1 question of, do you need something above and beyond. And at  
2 the risk -- I don't want to misquote. And Your Honor can  
3 look at the record. But this is from, I think it was from  
4 one of the hearing transcripts where basically I understood  
5 it that counsel basically said that you have to have  
6 something, you know, above and beyond what was already --  
7 what the folks might already need. And we've cited that  
8 hearing transcript so Your Honor can look at that for  
9 yourself.

10 One other point here. The plaintiffs say, well,  
11 this is not personal injury. And, frankly, you know, that's  
12 not so clear at this point based on their complaint.

13 So in opposition to the motion for judgment on the  
14 pleadings they said that they have quote, plead physical  
15 harm to their person. You know, that's when they were  
16 trying to avoid certain of the other issues, right, on their  
17 motion.

18 They said in their opposition at page 6 that  
19 quote, their bodies have been invaded by PFOA. They said in  
20 their second amended complaint and in their opposition to  
21 the motion for judgment on the pleadings and again at the  
22 April 10th hearing, that they have quote, damage to their  
23 blood, liver, kidneys, immune systems and other organs.  
24 That's what the plaintiffs are saying.

25 They said that their medical monitoring claims

1 seek the cost of additional medical testing that are quote,  
2 above and beyond the medical testing they normally  
3 undertake. And Your Honor can read that. That's at the  
4 April 10th hearing at 37-25 to 38-8.

5 And then, frankly, they've changed their class  
6 definition such that the most recent amended complaint  
7 proposed a class definition that includes those with  
8 physical injuries but who have not yet filed suit.

9 So that's kind of a, you know, it seems like a  
10 nuance, but their prior definition basically had people --  
11 they excluded people who have personal injuries. Now  
12 they've not excluded those folks, it's just that they've  
13 filed a separate lawsuit, right.

14 So, again, at this point they are the masters of  
15 their complaint. They've certainly at least put enough of  
16 these issues so to the extent that this has nothing to do  
17 with personal injuries, I don't know that that's necessarily  
18 true from their own complaints.

19 So I think it brings us back to a word we probably  
20 will agree with which is efficiency, right. Counsel talked  
21 about that. And I think it would be, with all due respect,  
22 sort of kind of widely inefficient to basically get to this  
23 point, you know, of class cert and hearing without having  
24 this core, kind of fundamental information.

25 Every defendant provides and presents this



1 information to a court. We need to have that obligation.  
2 This is not a situation where you need to decide underlying  
3 case law and then determine what's relevant. This is a  
4 straightforward Rule 26. This is information that every  
5 court, every court that's looked at it has allowed. And the  
6 converse is they have not cited a single case ever that says  
7 a defendant is not entitled to this information.

8           What they are essentially trying to do is put this  
9 Court on an island, which would be a very unusual and  
10 aggressive and kind of outlier position that prevents  
11 defendants from getting what is really plain vanilla  
12 discovery.

13           And the final thing is, you know, we understand  
14 there's some burdens to that. And we'll certainly be  
15 respectful in terms of how we deal with it. There's a  
16 protective order in place. But at the same time that you're  
17 hearing, you know, that there's some burden about filling  
18 out authorizations, you know, Saint-Gobain has its position,  
19 right, that there's no liability and there's no -- class  
20 cert should be appropriate, but yet it's spending hundreds  
21 of thousands or millions of dollars to accommodate what we  
22 understand are their requests for discovery. And that's  
23 kind of the way the process needs to work so that we can  
24 have a fair opportunity to present our defenses to Your  
25 Honor.

1 THE COURT: All right.

2 MR. RULEY: May I be heard for maybe three more  
3 minutes, Your Honor?

4 THE COURT: Sure. Sure.

5 MR. RULEY: First, Rule 26, the current version,  
6 just addresses relevant. You're entitled to discovery of  
7 information that is relevant.

8 THE COURT: Yeah. Relevant or likely to lead.

9 MR. RULEY: I'm not -- I question whether the  
10 likely to lead language is still in Rule 26. But, in any  
11 event, in any event, if Saint-Gobain wants to challenge or  
12 wanted to challenge any of our discovery requests as seeking  
13 information that was not relevant, they were welcome to do  
14 that. All of our requests have been relevant. They all go  
15 to the issues of liability and other issues in this case.  
16 End of story.

17 We're here to determine whether what this  
18 particular part, most of everything else they've asked for  
19 we have responded to. So what we're here today for is to  
20 determine whether this part of what they are asking for is  
21 relevant or not.

22 Our central argument is, depending on the law of  
23 Vermont, it may be relevant or it may not. And the very  
24 cases Mr. Cheffo just got up here and cited and quoted to  
25 you make the point. The Rowe case was expressly and very

1 clearly and extensively decided pursuant to New Jersey law.  
2 And Mr. Cheffo wants to go ahead and say, well, he, he  
3 clearly, that court was able to decide whether class  
4 certification was appropriate because it can be proved on a  
5 common basis or not appropriate because it involves a set of  
6 highly individualized issues. That court reached that  
7 decision based on New Jersey law and without discussion of  
8 any details relative to the individual plaintiffs. It was  
9 just the general. There are differences in age, sex,  
10 gender, all of that. That's a given.

11 The second case he cited, Perez case Florida law,  
12 here again, the court clearly applied Florida law which has  
13 been interpreted as making medical monitoring an  
14 individualized remedy as opposed to a remedy based on a  
15 common threshold of exposure.

16 So that's the central issue here. And speaking of  
17 putting the cart before the horse, to require our plaintiffs  
18 to expose their lives and medical history to Saint-Gobain  
19 before that central legal issue is decided that's what would  
20 be putting the cart before the horse.

21 He also used the term, advisory opinion. Not so.  
22 This is the central legal issue in the medical monitoring  
23 part of this case. And it's going to have to be decided.  
24 And so they've come at it through a motion to compel. I  
25 think it would have been more sensible to address it just a

1 straight part of the motion for class certification, but one  
2 way or the other it's got to be decided. And it should be  
3 decided before our plaintiffs are required to produce their  
4 entire medical history or some sub-set of it to this  
5 defendant because that, that will be quite a process.

6 And for that to happen, but then for the Court to  
7 later decide, oh, we didn't mean to do that, that would --  
8 speaking of unfair and inefficient. So let's, let's settle  
9 the law and then we can proceed based on that. Thank you,  
10 Your Honor.

11 THE COURT: All right. I think you've both been  
12 super complete in your presentation.

13 MR. CHEFFO: Sure.

14 THE COURT: And we'll give it some thought and  
15 I'll get something out as quick as I can.

16 Anything else we can take up while you're both  
17 here? Everything else is progressing?

18 MR. CHEFFO: Yes, Your Honor.

19 MR. RULEY: Yes, Your Honor.

20 THE COURT: All right. I'll let you get home.  
21 Thanks for making the trip.

22 MR. RULEY: Thank you, Your Honor.

23 MR. CHEFFO: Thank you, Your Honor.

24 (The Court recessed at 11:44 a.m.)  
25

## C E R T I F I C A T E

I, Anne Marie Henry, Official Court Reporter for the United States District Court, for the District of Vermont, do hereby certify that the foregoing pages are a true and accurate transcription of my shorthand notes taken in the aforementioned matter to the best of my skill and ability.

A handwritten signature in cursive script that reads "Anne Marie Henry". The signature is written in black ink and is positioned above a horizontal line.

Anne Marie Henry, RPR  
Official Court Reporter

1 the Court opened at 11:50 p.m.

2 THE CLERK: Your Honor the matter before the Court  
3 is criminal number 16/148/three, United States of America  
4 versus Brandon low. Present on we have the government is  
5 Assistant United States Attorney Gregory Waples. The  
6 defendant is present with his attorney hands her math son  
7 and we are here for a change of plea.

8 THE COURT: All right. Story to be behind T. I  
9 appreciate your patience.

10 MR. CHEFFO: Good morning Your Honor.

11 THE COURT: Good morning good to see you. All  
12 three of you. Mr. Low, before I can except your guilty plea  
13 I need to ask you some questions to make certain that you  
14 tries are protected and that your plea is voluntary.  
15 Everything we say here is recorded. And so I know if I ask  
16 you a question you'll answer allowed. If you don't  
17 understand my question or you don't understand some part of  
18 this proceeding please say so. It's my job to take the time  
19 to explain your rights fully T. it's important that you  
20 understand my questions and everything else that's can said  
21 and if you wish to at any points to speak privately with  
22 your attorney, with Mr. Matson just say so and we'll take a  
23 break and afford optants do that he will privately in a  
24 conference room or something like that. Do you understand  
25 what I have seed so far?

1 MR. RULEY: Yes.

2 THE COURT: At this time I'm going to ask that you  
3 been placed under oath. Do you understand if you make a  
4 statement today which is not true that the statement could  
5 be used against you in a separate prosecution for perjury or  
6 for making atolls statement?

7 MR. RULEY: Yes, Your Honor.

8 THE COURT: F.

9 The Witness, after being duly sworn, testified as  
10 follows:

11 DIRECT EXAMINATION BY THE COURT:

12 Q. Could you state your full name please?

13 A. Low.

14 Q. And Mr. Low how old?

15 A. What.

16 Q. Is is your age?

17 A. I'm 25.

18 Q. And what the is the extent of your school education?

19 A. Actually to go the university right now.

20 Q. Currently a university students?

21 A. Yes.

22 Q. Okay. And do you have any employment outside of your  
23 school work?

24 A. Yup is.

25 Q. Where do you work point Is see a seeing and company.

1 Q. What kind of company?

2 A. Seeing appearing company. For hands bags.

3 Q. I'm their Matson?

4 MR. CHEFFO: Seeing and company for hand bags Your  
5 Honor.

6 THE COURT: Oh abiding company. Oh okay. I got  
7 it.

8 Q. And do you speak and understandings English?

9 A. Yes, sir.

10 Q. And what is your citizenship?

11 A. Canadian.

12 Q. And are you currently under the care of a doctor or  
13 psychiatrist?

14 A. No, Your Honor.

15 Q. Have you recently be hospitalized object treated for  
16 drug addiction?

17 A. No, Your Honor.

18 Q. Have you taken any drugs or medicine or any pills or  
19 consumed alcohol within the last 24 hours?

20 A. No.

21 Q. Do you feel that you yourself of a clear understanding  
22 of this proceeding today?

23 A. Can you repeat that Your Honor plea.

24 Q. Do you feel that you a clear understanding of this  
25 change of plea proceeding?



1 A. Yes, Your Honor.

2 Q. And counsel for the defense or government of any doubt  
3 to enter a val I flied?

4 MR. CHEFFO: No, Your Honor.

5 MR. RULEY: The government does not turn.

6 THE COURT: I received a copy proposed plea  
7 agreement Mr. Low. My first question is this, are you fully  
8 satisfied with counsel and advise given to you in the case  
9 by your attorney hand here Matson.

10 MR. RULEY: Yes, Your Honor.

11 Q. And did you have an opportunity to read and talk Dover  
12 the plea agreement with him before you signed it?

13 A. Yes, Your Honor.

14 Q. And was by to answer all the questions you may have had  
15 about it?

16 A. Yes, sir.

17 Q. And did you then yourself sign the plea agreement?

18 A. Yes, Your Honor.

19 Q. Does the plea agreement represent the complete  
20 understanding you have with the government?

21 A. Yes, Your Honor.

22 Q. Is there any further agreement with the government by  
23 isn't written down in the plea agreement?

24 A. No, Your Honor.

25 Q. Do you understand the terms of the plea agreement you

1     yourself?

2     A.    Yes, Your Honor.

3     Q.    Sometimes there's an exhibit I be.  I I want to make  
4    sure I didn't overlook it.  Is there one in this case?

5                 MR. RULEY:  No, Your Honor.

6                 THE COURT:  Thanks.

7     Q.    Has anyone made any promise or assurance to you that's  
8    not contained in the flee agreement to zipper persuade you  
9    to accept it?  (Conferring off the record with his lawyer )?

10    A.    No, Your Honor.

11    Q.    Has any one threatened you in any way to persuade you  
12   to accept the plea agreement?

13    A.    No, Your Honor.

14    Q.    Do you understand that the terms of the plea agreement  
15   are recommendations to the Court, the plea agreement  
16   contains no limit on tenths length of any sentence other  
17   than of course the scenario fence not exceed the length  
18   allowed bylaw?

19    A.    Yes, Your Honor.

20    Q.    Mr. Matson with flaw formal plea offers give the  
21   government conveyed to their low?

22                 MR. CHEFFO:  Yup.

23    Q.    Do you understand that the offense to which you are  
24   pleading guilty is is a felony offense and that if your plea  
25   is accepted you'll be judged guilty of that offense and that

1 that judgment will deprive you have or may cause you to be  
2 excluded, not admitted, to the United States if you were to  
3 seek admission in the future?

4 A. Yes, Your Honor.

5 Q. And do you understand that the maximum penalty provided  
6 bylaw is up to five years of I'm prison many, a fine of up  
7 to \$250,000, a period of the supervised release of not more  
8 than three years and take 100 teds special assessment?

9 A. Yes, Your Honor.

10 Q. I need to tell you that your sentence will be  
11 determined in the ends by a come by operation of advisory  
12 sentencing guidelines, possible authorized departures from  
13 those guidelines and other stat tore eye sentencing factors.  
14 Have you and your attorney talked about how these advisory  
15 guidelines night apply in your case?

16 A. Yes, Your Honor.

17 Q. And do you understand that the Court will not would be  
18 to determine the advisory guideline range for your case  
19 until after the Pre-Sentence Report hats be to complete ted  
20 and you and the government can have have had an opportunity  
21 to challenge the reported facts and the application of the  
22 guidelines recommended also by the probation to have search  
23 and that the sentence ultimately impose had may be different  
24 from any estimate that you are attorney or anyone else may  
25 have given you?

1 A. Yes, Your Honor.

2 Q. Do you understand is an has been determined the Court  
3 has the authority in some circumstances to depart upwards or  
4 downwards from that range and it will it will other  
5 statutory sentencing factors under the law thiemia result in  
6 the sentence that's either greater or less n than the  
7 advisory guideline sentence?

8 A. Yes, Your Honor.

9 Q. Do you understand that parole has been abolish inned if  
10 federal system and in your sentenced to prison you will not  
11 be released on parole?

12 A. Yes, Your Honor.

13 Q. Do you understand under some circumstances you or the  
14 government may have the right to appeal any sentence that I  
15 impose?

16 A. Yes, Your Honor.

17 Q. I'm going to talk to you will about your trial rights.  
18 These are important constitutional rights which you have now  
19 but in effect you give them up when you need guilty and  
20 that's because you give up your trial at that point many so  
21 that's why we take the time to talk about them T. do you  
22 understand fir that you have ever right to plead not guilty  
23 to any offense charged against you and to take the case to  
24 trial?

25 A. Yes, Your Honor.

1 Q. Do you understand that you will would then have the  
2 right to a trial in front of a jury?

3 A. Yes, Your Honor.

4 Q. Do you understand that if you requested a jury trial  
5 all members of the jury wrote of to agree that you were  
6 guilty before you could be found guilty?

7 A. Yes, Your Honor.

8 Q. Do you understand that you'd have the right to  
9 participate in collecting those jury members from members of  
10 the community?

11 A. Yes, Your Honor.

12 Q. Do you understand that at trial you'd be presumed to be  
13 innocent, the government would have to prove you guilty  
14 beyond a reasonable doubt?

15 A. Yes, Your Honor.

16 Q. Do you understand you'd have the truth to the  
17 assistance of counsel for your defense appointed by the  
18 Court if necessary at trial and at every other stage of the  
19 case?

20 A. Yes, Your Honor.

21 Q. Do you understand you'd have the right to see and hear  
22 all the witnesses and of them cross-examined in your  
23 defense?

24 A. Yes, Your Honor.

25 Q. Do you understand you'd have the right on your own part

1 to decline to testify unless you voluntarily elected to do  
2 so in your own defense?

3 A. Yes.

4 Q. Do you understand you'd have the right to testify and  
5 to put on your own evidence at a trial?

6 A. Yell Your Honor.

7 Q. Do you understand that'd E. have the right to compel  
8 witnesses to attends to testify in you defense?

9 A. Yes, Your Honor.

10 Q. In other words do you understand you could if the your  
11 own witnesses and evidence at a trial?

12 A. Yes, Your Honor.

13 Q. Do you understand that if a witness didn't wish to come  
14 the Court could order him or her to come and testify anyway?

15 A. Yes, Your Honor.

16 Q. Do you understand that if you decided not to testify or  
17 not the put on any evidence that this, these facts could not  
18 be used against you at trial?

19 A. Yes.

20 THE COURT: Story I appreciate it. I cut you off.

21 Q. Do you understand that nobody could force you to  
22 testify because you have a privilege against incriminating  
23 yourself?

24 A. Yes, Your Honor.

25 Q. Do you understand that if you were found guilt see

1 after a trial you could appeal your conviction to a higher  
2 court?

3 A. Yes, Your Honor.

4 Q. Do you understand that by entering a plea of guilty and  
5 if that plea is accepted by the Court there will be no trial  
6 and you'll have waived or given up your right to take trial as  
7 well as those so rights associated with a trial which I've  
8 just described?

9 A. Yes, Your Honor.

10 Q. I want to return for just a second to my discussion  
11 about the consequences of a felony convictions for you.  
12 You Canadian citizen correct?

13 A. I'm what sir.

14 THE COURT: Repeat. Do you understand that as I  
15 said a moment ago one consequence of the conviction is  
16 likely to be that you'll be excluded, not granted entry into  
17 the United States.

18 MR. RULEY: Yes, Your Honor.

19 BY THE COURT:

20 Q. Do you understand that if, and that's not a decision  
21 that the Court makes, that's an immigration decision, do you  
22 understand that if you did with granted admission to the  
23 United States that that felony offense would have  
24 consequences as he said during your period of the rest of  
25 your life in the U.S.?

1 A. Yes, Your Honor.

2 Q. Such as that it may, night well deprive you have  
3 important still rights such as the right to vote the truth  
4 to hold public office the truth to serve on a jury and the  
5 truth to know he is any kind of firearm?

6 A. Yes, Your Honor.

7 Q. But that as is a practical matter the nose immediate  
8 consequence of this felony conviction is likely to be you  
9 exclusion from the us?

10 A. Yes, Your Honor.

11 Q. Okay.

12 BY THE COURT:

13 Q. Do you understand that at trial the government would  
14 have to prove the essential elements to the offense to which  
15 you are plead guilty couldn't one, which is charged of  
16 conspiracy to commit access device fraud. It would of to  
17 prove threes essential elements beyond a reasonable doubt?

18 A. Yes, Your Honor.

19 Q. And I'll go over the elements of that offense were you.

20 MR. RULEY: Do you need my copy judge civil of  
21 the.

22 MR. RULEY: From last time. The tell he T. of the  
23 C. C. conspiracy.

24 THE COURT: I was just making sure. I have it  
25 here. I was just making sure that was exactly 1029 about



1 two?

2 MR. RULEY: Yes.

3 THE COURT: Got it. Thank you. Do you understand  
4 that the elements are as follows Mr. Low. T. one, at a  
5 particular time which is charged as from him in or about  
6 March 2016 to October 24, 2016 T. two at a particular place  
7 which is charged as the District of Vermont which means  
8 within the State of Vermont and well are elsewhere. Three,  
9 you were a member of a conspiracy which in this case means  
10 an agreement among two or more people to commit fraud in  
11 connection with use of an unauthorized access device. And  
12 four, at least one member of the conspiracy engaged in  
13 conduct in that you are they are answer of the fraud. Five  
14 you talk Ted knowingly and were in tend to did you fraud in  
15 joining in the conspiracy. #, the fraud at issue concerned  
16 the use of an unauthorized access did he vice which is say a  
17 credit card plate code such as affine, B. that can be used  
18 alone or in come by ammunition with another access device.  
19 C. to obtain money goods services oh other or to initiate a  
20 trance other of funds other than the transfer original had  
21 by paper the. Seven in the course of the from you the  
22 defendant and other members of the conspiracy received money  
23 or value within a one year period of in exhibit test of  
24 \$1000. And eight the fraud, the conduct conspiracy taught  
25 go the fraud affect ted interstate or foreign commerce. Do

1 you understand that those are the legal elements of the  
2 couldn't one the charge of conspiracy to commit C. C. fraud  
3 or access devise fraud.

4 MR. RULEY: Yes, Your Honor.

5 THE COURT: Can the government provide a summary  
6 of the facts you'd be prepared to November at trial.

7 MR. RULEY: I can judge. Before that could I  
8 invite the Court to make certain that Mr. Low understands  
9 that by reason of his guilty plea the Court will not be  
10 hearing his motion to suppress that is still technically  
11 pinned doctoring.

12 THE COURT: Yes absolutely. Do you understand  
13 that counsel makes a good point that you have through your  
14 attorney filed a motion to suppress certain evidence. That  
15 is tea an important correct led step to take. But that one  
16 consequence of pleading guilty is that the Court will not  
17 schedule a hearing and issue a decision on your motion that  
18 it will instead be marked as, as withdrawn because you need  
19 guilty.

20 MR. RULEY: Yes, Your Honor.

21 THE COURT: Sock T.

22 MR. RULEY: Thank you Your Honor. Your Honor, we  
23 believe that the evidence in this case would show that  
24 beginning in around March have 2016 other co-conspirators  
25 formed an agreement to commit access did he industries fraud

1 in the United States basically by using counterfeit C. C. z  
2 to obtain money. At some point the defendant became a  
3 member of the conspiracy. We believe at the invitation of  
4 the co-defendant Mr. Book a Lee knee. In the course of this  
5 conspiracy Mr. Book a Lee knee obtained again Wayne credit  
6 cards numbers again we believe they were skim had from the  
7 users have taxicabs in the none tree all area. Those  
8 persons can both can aid E. and and European citizens many  
9 at some point the C. C. numbers with brought to the United  
10 States biz conspirators and the numbers with even encoded  
11 this to blank gift starred stock at which point those  
12 guideline range cards became the functional equivalent of  
13 counterfeit debit cards. Overstaff recall into period  
14 between about may and September have 2016 their low and  
15 other co-conspirators used these counterfeit access device  
16 did he say to obtain approximately a hundred thousand  
17 dollars in money from banks in Vermont give use the  
18 counterfeit C. C. cards at ATM's to withdraw cash. Mr. Low  
19 himself came to the United States in the company of sear un  
20 charged co-conspirator on September 22, 2016. He stayed  
21 approximately three days and during that period among other  
22 things, he used counterfeit C. characterize to obtain money  
23 from banks in Vermont.

24 In the course of the conspiracy the defendant and  
25 others committed the overt acts that are charge inned the

1 indictment specifically on September 22 have 2016 their  
2 throw traveled from Canada into Vermont for the purpose of  
3 participating in the C. C. fraud.

4 Q. Mr. Low, has the prosecution accurately described the  
5 offense and your role in it?

6 A. Yes, Your Honor.

7 Q. And do you agrees agree with any portion of the  
8 prosecutions description of you conduct?

9 A. No, Your Honor.

10 Q. And do you intend to plead guilty to count one, the  
11 conspiracy to commit access device fraud or C. C. fraud  
12 because you r in fact guilty of that charge?

13 A. Yes, Your Honor.

14 Q. How do you plead to count one guilty or not guilty?

15 A. Guilty. It's the find thing of the Court in the case  
16 of United States verse he is bran ton low that the defendant  
17 is fully competent and capable of entering an informed plea  
18 the defendant is aware of the nature of the charges answer  
19 the consequences of the plea and the plea of Guilty Street a  
20 take forward basis in fact contains each of the essential  
21 elements of the offense. The plaintiff flee is therefore  
22 accepted and the defendant is adjudged guilty of that  
23 offense. I'll set sentencing date in a minute at this time  
24 and talk to you about what will happen between now and then.  
25 A principle think is a Pre-Sentence Report there been

1 prepared by the probation office to assist the judge in  
2 sentencing T. the probation officer is here today. I know  
3 she'll speak with you and Mr. Matson at the other ends of  
4 this hearing. You'll be asked to give information for this  
5 report. Your attorney will be present for any interview if  
6 you wish. At the sentencing hearing before the sentencing  
7 hearing the Court will permit you and your attorney to read  
8 the Pre-Sentence Report and file any objection to the report  
9 before the hearing. At the hearing you and your attorney  
10 will both of a opportunity to speak to you behalf. I'll  
11 refer the case to the probation officer for a Pre-Sentence  
12 Report and well E. set a sentencing date.

13 THE CLERK: Sentencing is satisfied waled for  
14 Thursday December 28 at 1:30 here in Rutland slammed. Again  
15 that's Thursday December 28 at 1:30 in Rutland.

16 THE COURT: All right. Mr. Waples any objection  
17 their lows continued release on candescent.

18 MR. RULEY: No I believe the defense can neat it  
19 is burden when I proving by clear and convincing evidence  
20 that Mr. Low does not prove to be either aiding error is a  
21 risk of flight.

22 THE COURT: Good. Thank you many anything further  
23 from seat other side. I appreciate your help T. all right.  
24 Good enough.

25 MR. CHEFFO: So fish all lie on the record the

1 defense street withdrawing the previously filed motion to  
2 suppress.

3 THE COURT: Good enough. Well E. insurance it  
4 that way. Thank you both.

5 The Court recessed at 12:14 p.m.  
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## C E R T I F I C A T E

I, Anne Marie Henry, Official Court Reporter for the United States District Court, for the District of Vermont, do hereby certify that the foregoing pages are a true and accurate transcription of my shorthand notes taken in the aforementioned matter to the best of my skill and ability.

A handwritten signature in cursive script that reads "Anne Marie Henry". The signature is written in black ink and is positioned above a horizontal line.

Anne Marie Henry, RPR  
Official Court Reporter